

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide a complete substitute.

**IN THE SENATE OF THE UNITED STATES—109th Cong., 2d Sess.**

**S. 1955**

To amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. ENZI

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Health Insurance Marketplace Modernization and Af-  
6 fordability Act of 2006”.

7 (b) TABLE OF CONTENTS.—The table of contents is  
8 as follows:

## 2

Sec. 1. Short title; table of contents; purposes.

TITLE I—SMALL BUSINESS HEALTH PLANS

Sec. 101. Rules governing small business health plans.

Sec. 102. Cooperation between Federal and State authorities.

Sec. 103. Effective date and transitional and other rules.

TITLE II—MARKET RELIEF

Sec. 201. Market relief.

TITLE III—HARMONIZATION OF HEALTH INSURANCE STANDARDS

Sec. 301. Health Insurance Standards Harmonization.

1 (c) PURPOSES.—It is the purpose of this Act to—

2 (1) make more affordable health insurance op-  
3 tions available to small businesses, working families,  
4 and all Americans;

5 (2) assure effective State regulatory protection  
6 of the interests of health insurance consumers; and

7 (3) create a more efficient and affordable health  
8 insurance marketplace through collaborative develop-  
9 ment of uniform regulatory standards.

10 **TITLE I—SMALL BUSINESS**  
11 **HEALTH PLANS**

12 **SEC. 101. RULES GOVERNING SMALL BUSINESS HEALTH**  
13 **PLANS.**

14 (a) IN GENERAL.—Subtitle B of title I of the Em-  
15 ployee Retirement Income Security Act of 1974 is amend-  
16 ed by adding after part 7 the following new part:

1    **“PART 8—RULES GOVERNING SMALL BUSINESS**

2                               **HEALTH PLANS**

3    **“SEC. 801. SMALL BUSINESS HEALTH PLANS.**

4           “(a) IN GENERAL.—For purposes of this part, the  
5 term ‘small business health plan’ means a fully insured  
6 group health plan whose sponsor is (or is deemed under  
7 this part to be) described in subsection (b).

8           “(b) SPONSORSHIP.—The sponsor of a group health  
9 plan is described in this subsection if such sponsor—

10               “(1) is organized and maintained in good faith,  
11 with a constitution and bylaws specifically stating its  
12 purpose and providing for periodic meetings on at  
13 least an annual basis, as a bona fide trade associa-  
14 tion, a bona fide industry association (including a  
15 rural electric cooperative association or a rural tele-  
16 phone cooperative association), a bona fide profes-  
17 sional association, or a bona fide chamber of com-  
18 merce (or similar bona fide business association, in-  
19 cluding a corporation or similar organization that  
20 operates on a cooperative basis (within the meaning  
21 of section 1381 of the Internal Revenue Code of  
22 1986)), for substantial purposes other than that of  
23 obtaining medical care;

24               “(2) is established as a permanent entity which  
25 receives the active support of its members and re-  
26 quires for membership payment on a periodic basis

1 of dues or payments necessary to maintain eligibility  
2 for membership;

3 “(3) does not condition membership, such dues  
4 or payments, or coverage under the plan on the  
5 basis of health status-related factors with respect to  
6 the employees of its members (or affiliated mem-  
7 bers), or the dependents of such employees, and does  
8 not condition such dues or payments on the basis of  
9 group health plan participation; and

10 “(4) does not condition membership on the  
11 basis of a minimum group size.

12 Any sponsor consisting of an association of entities which  
13 meet the requirements of paragraphs (1), (2), (3), and (4)  
14 shall be deemed to be a sponsor described in this sub-  
15 section.

16 **“SEC. 802. CERTIFICATION OF SMALL BUSINESS HEALTH**  
17 **PLANS.**

18 “(a) IN GENERAL.—Not later than 6 months after  
19 the date of enactment of this part, the applicable authority  
20 shall prescribe by interim final rule a procedure under  
21 which the applicable authority shall certify small business  
22 health plans which apply for certification as meeting the  
23 requirements of this part.

24 “(b) REQUIREMENTS APPLICABLE TO CERTIFIED  
25 PLANS.—A small business health plan with respect to

1 which certification under this part is in effect shall meet  
2 the applicable requirements of this part, effective on the  
3 date of certification (or, if later, on the date on which the  
4 plan is to commence operations).

5 “(c) REQUIREMENTS FOR CONTINUED CERTIFI-  
6 CATION.—The applicable authority may provide by regula-  
7 tion for continued certification of small business health  
8 plans under this part. Such regulation shall provide for  
9 the revocation of a certification if the applicable authority  
10 finds that the small business health plan involved is failing  
11 to comply with the requirements of this part.

12 “(d) EXPEDITED AND DEEMED CERTIFICATION.—

13 “(1) IN GENERAL.—If the Secretary fails to act  
14 on an application for certification under this section  
15 within 90 days of receipt of such application, the ap-  
16 plying small business health plan shall be deemed  
17 certified until such time as the Secretary may deny  
18 for cause the application for certification.

19 “(2) CIVIL PENALTY.—The Secretary may as-  
20 sess a civil penalty against the board of trustees and  
21 plan sponsor (jointly and severally) of a small busi-  
22 ness health plan that is deemed certified under para-  
23 graph (1) of up to \$500,000 in the event the Sec-  
24 retary determines that the application for certifi-  
25 cation of such small business health plan was will-

1 fully or with gross negligence incomplete or inac-  
2 curate.

3 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**  
4 **BOARDS OF TRUSTEES.**

5 “(a) SPONSOR.—The requirements of this subsection  
6 are met with respect to a small business health plan if  
7 the sponsor has met (or is deemed under this part to have  
8 met) the requirements of section 801(b) for a continuous  
9 period of not less than 3 years ending with the date of  
10 the application for certification under this part.

11 “(b) BOARD OF TRUSTEES.—The requirements of  
12 this subsection are met with respect to a small business  
13 health plan if the following requirements are met:

14 “(1) FISCAL CONTROL.—The plan is operated,  
15 pursuant to a plan document, by a board of trustees  
16 which pursuant to a trust agreement has complete  
17 fiscal control over the plan and which is responsible  
18 for all operations of the plan.

19 “(2) RULES OF OPERATION AND FINANCIAL  
20 CONTROLS.—The board of trustees has in effect  
21 rules of operation and financial controls, based on a  
22 3-year plan of operation, adequate to carry out the  
23 terms of the plan and to meet all requirements of  
24 this title applicable to the plan.

1           “(3) RULES GOVERNING RELATIONSHIP TO  
2 PARTICIPATING EMPLOYERS AND TO CONTRAC-  
3 TORS.—

4           “(A) BOARD MEMBERSHIP.—

5           “(i) IN GENERAL.—Except as pro-  
6 vided in clauses (ii) and (iii), the members  
7 of the board of trustees are individuals se-  
8 lected from individuals who are the owners,  
9 officers, directors, or employees of the par-  
10 ticipating employers or who are partners in  
11 the participating employers and actively  
12 participate in the business.

13           “(ii) LIMITATION.—

14           “(I) GENERAL RULE.—Except as  
15 provided in subclauses (II) and (III),  
16 no such member is an owner, officer,  
17 director, or employee of, or partner in,  
18 a contract administrator or other  
19 service provider to the plan.

20           “(II) LIMITED EXCEPTION FOR  
21 PROVIDERS OF SERVICES SOLELY ON  
22 BEHALF OF THE SPONSOR.—Officers  
23 or employees of a sponsor which is a  
24 service provider (other than a contract  
25 administrator) to the plan may be

1 members of the board if they con-  
2 stitute not more than 25 percent of  
3 the membership of the board and they  
4 do not provide services to the plan  
5 other than on behalf of the sponsor.

6 “(III) TREATMENT OF PRO-  
7 VIDERS OF MEDICAL CARE.—In the  
8 case of a sponsor which is an associa-  
9 tion whose membership consists pri-  
10 marily of providers of medical care,  
11 subclause (I) shall not apply in the  
12 case of any service provider described  
13 in subclause (I) who is a provider of  
14 medical care under the plan.

15 “(iii) CERTAIN PLANS EXCLUDED.—  
16 Clause (i) shall not apply to a small busi-  
17 ness health plan which is in existence on  
18 the date of the enactment of the Health  
19 Insurance Marketplace Modernization and  
20 Affordability Act of 2006.

21 “(B) SOLE AUTHORITY.—The board has  
22 sole authority under the plan to approve appli-  
23 cations for participation in the plan and to con-  
24 tract with insurers.



1       “(c) TREATMENT OF FRANCHISE NETWORKS.—In  
2 the case of a group health plan which is established and  
3 maintained by a franchiser for a franchise network con-  
4 sisting of its franchisees—

5               “(1) the requirements of subsection (a) and sec-  
6 tion 801(a) shall be deemed met if such require-  
7 ments would otherwise be met if the franchiser were  
8 deemed to be the sponsor referred to in section  
9 801(b), such network were deemed to be an associa-  
10 tion described in section 801(b), and each franchisee  
11 were deemed to be a member (of the association and  
12 the sponsor) referred to in section 801(b); and

13               “(2) the requirements of section 804(a)(1) shall  
14 be deemed met.

15 The Secretary may by regulation define for purposes of  
16 this subsection the terms ‘franchiser’, ‘franchise network’,  
17 and ‘franchisee’.

18 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**  
19 **MENTS.**

20       “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The  
21 requirements of this subsection are met with respect to  
22 a small business health plan if, under the terms of the  
23 plan—

24               “(1) each participating employer must be—

25                       “(A) a member of the sponsor;

1 “(B) the sponsor; or

2 “(C) an affiliated member of the sponsor,  
3 except that, in the case of a sponsor which is  
4 a professional association or other individual-  
5 based association, if at least one of the officers,  
6 directors, or employees of an employer, or at  
7 least one of the individuals who are partners in  
8 an employer and who actively participates in  
9 the business, is a member or such an affiliated  
10 member of the sponsor, participating employers  
11 may also include such employer; and

12 “(2) all individuals commencing coverage under  
13 the plan after certification under this part must  
14 be—

15 “(A) active or retired owners (including  
16 self-employed individuals), officers, directors, or  
17 employees of, or partners in, participating em-  
18 ployers; or

19 “(B) the dependents of individuals de-  
20 scribed in subparagraph (A).

21 “(b) INDIVIDUAL MARKET UNAFFECTED.—The re-  
22 quirements of this subsection are met with respect to a  
23 small business health plan if, under the terms of the plan,  
24 no participating employer may provide health insurance  
25 coverage in the individual market for any employee not

1 covered under the plan which is similar to the coverage  
2 contemporaneously provided to employees of the employer  
3 under the plan, if such exclusion of the employee from cov-  
4 erage under the plan is based on a health status-related  
5 factor with respect to the employee and such employee  
6 would, but for such exclusion on such basis, be eligible  
7 for coverage under the plan.

8 “(c) PROHIBITION OF DISCRIMINATION AGAINST EM-  
9 PLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—  
10 The requirements of this subsection are met with respect  
11 to a small business health plan if—

12 “(1) under the terms of the plan, all employers  
13 meeting the preceding requirements of this section  
14 are eligible to qualify as participating employers for  
15 all geographically available coverage options, unless,  
16 in the case of any such employer, participation or  
17 contribution requirements of the type referred to in  
18 section 2711 of the Public Health Service Act are  
19 not met;

20 “(2) information regarding all coverage options  
21 available under the plan is made readily available to  
22 any employer eligible to participate; and

23 “(3) the applicable requirements of sections  
24 701, 702, and 703 are met with respect to the plan.

1 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**  
2 **DOCUMENTS, CONTRIBUTION RATES, AND**  
3 **BENEFIT OPTIONS.**

4 “(a) IN GENERAL.—The requirements of this section  
5 are met with respect to a small business health plan if  
6 the following requirements are met:

7 “(1) CONTENTS OF GOVERNING INSTRU-  
8 MENTS.—

9 “(A) IN GENERAL.—The instruments gov-  
10 erning the plan include a written instrument,  
11 meeting the requirements of an instrument re-  
12 quired under section 402(a)(1), which—

13 “(i) provides that the board of trust-  
14 ees serves as the named fiduciary required  
15 for plans under section 402(a)(1) and  
16 serves in the capacity of a plan adminis-  
17 trator (referred to in section 3(16)(A));  
18 and

19 “(ii) provides that the sponsor of the  
20 plan is to serve as plan sponsor (referred  
21 to in section 3(16)(B)).

22 “(B) DESCRIPTION OF MATERIAL PROVI-  
23 SIONS.—The terms of the health insurance cov-  
24 erage (including the terms of any individual  
25 certificates that may be offered to individuals in  
26 connection with such coverage) describe the ma-

1           terial benefit and rating, and other provisions  
2           set forth in this section and such material pro-  
3           visions are included in the summary plan de-  
4           scription.

5           “(2) CONTRIBUTION RATES MUST BE NON-  
6           DISCRIMINATORY.—

7                   “(A) IN GENERAL.—The contribution rates  
8           for any participating small employer shall not  
9           vary on the basis of any health status-related  
10          factor in relation to employees of such employer  
11          or their beneficiaries and shall not vary on the  
12          basis of the type of business or industry in  
13          which such employer is engaged.

14                  “(B) EFFECT OF TITLE.—Nothing in this  
15          title or any other provision of law shall be con-  
16          strued to preclude a health insurance issuer of-  
17          fering health insurance coverage in connection  
18          with a small business health plan, and at the  
19          request of such small business health plan,  
20          from—

21                          “(i) setting contribution rates for the  
22                  small business health plan based on the  
23                  claims experience of the plan so long as  
24                  any variation in such rates complies with  
25                  the requirements of clause (ii), except that

1 small business health plans shall not be  
2 subject to paragraphs (1)(A) and (3) of  
3 section 2911(b) of the Public Health Serv-  
4 ice Act; or

5 “(ii) varying contribution rates for  
6 participating employers in a small business  
7 health plan in a State to the extent that  
8 such rates could vary using the same  
9 methodology employed in such State for  
10 regulating small group premium rates,  
11 subject to the terms of part I of subtitle A  
12 of title XXIX of the Public Health Service  
13 Act (relating to rating requirements), as  
14 added by title II of the Health Insurance  
15 Marketplace Modernization and Afford-  
16 ability Act of 2006.

17 “(3) EXCEPTIONS REGARDING SELF-EMPLOYED  
18 AND LARGE EMPLOYERS.—

19 “(A) SELF EMPLOYED.—

20 “(i) IN GENERAL.—Small business  
21 health plans with participating employers  
22 who are self-employed individuals (and  
23 their dependents) shall enroll such self-em-  
24 ployed participating employers in accord-  
25 ance with rating rules that do not violate

1 the rating rules for self-employed individ-  
2 uals in the State in which such self-em-  
3 ployed participating employers are located.

4 “(ii) GUARANTEE ISSUE.—Small busi-  
5 ness health plans with participating em-  
6 ployers who are self-employed individuals  
7 (and their dependents) may decline to  
8 guarantee issue to such participating em-  
9 ployers in States in which guarantee issue  
10 is not otherwise required for the self-em-  
11 ployed in that State.

12 “(B) LARGE EMPLOYERS.—Small business  
13 health plans with participating employers that  
14 are larger than small employers (as defined in  
15 section 808(a)(10)) shall enroll such large par-  
16 ticipating employers in accordance with rating  
17 rules that do not violate the rating rules for  
18 large employers in the State in which such large  
19 participating employers are located.

20 “(4) REGULATORY REQUIREMENTS.—Such  
21 other requirements as the applicable authority deter-  
22 mines are necessary to carry out the purposes of this  
23 part, which shall be prescribed by the applicable au-  
24 thority by regulation.

1       “(b) ABILITY OF SMALL BUSINESS HEALTH PLANS  
2 TO DESIGN BENEFIT OPTIONS.—Nothing in this part or  
3 any provision of State law (as defined in section  
4 514(c)(1)) shall be construed to preclude a small business  
5 health plan or a health insurance issuer offering health  
6 insurance coverage in connection with a small business  
7 health plan from exercising its sole discretion in selecting  
8 the specific benefits and services consisting of medical care  
9 to be included as benefits under such plan or coverage,  
10 except that such benefits and services must meet the terms  
11 and specifications of part II of subtitle A of title XXIX  
12 of the Public Health Service Act (relating to lower cost  
13 plans), as added by title II of the Health Insurance Mar-  
14 ketplace Modernization and Affordability Act of 2006.

15       “(c) DOMICILE AND NON-DOMICILE STATES.—

16           “(1) DOMICILE STATE.—Coverage shall be  
17 issued to a small business health plan in the State  
18 in which the sponsor’s principal place of business is  
19 located.

20           “(2) NON-DOMICILE STATES.—With respect to  
21 a State (other than the domicile State) in which par-  
22 ticipating employers of a small business health plan  
23 are located but in which the insurer of the small  
24 business health plan in the domicile State is not yet  
25 licensed, the following shall apply:



1           “(A) TEMPORARY PREEMPTION.—If, upon  
2           the expiration of the 90-day period following  
3           the submission of a licensure application by  
4           such insurer (that includes a certified copy of  
5           an approved licensure application as submitted  
6           by such insurer in the domicile State) to such  
7           State, such State has not approved or denied  
8           such application, such State’s health insurance  
9           licensure laws shall be temporarily preempted  
10          and the insurer shall be permitted to operate in  
11          such State, subject to the following terms:

12                 “(i) APPLICATION OF NON-DOMICILE  
13                 STATE LAW.—Except with respect to licen-  
14                 sure and with respect to the terms of sub-  
15                 title A of title XXIX of the Public Health  
16                 Service Act (relating to rating and benefits  
17                 as added by the Health Insurance Market-  
18                 place Modernization and Affordability Act  
19                 of 2006), the laws and authority of the  
20                 non-domicile State shall remain in full  
21                 force and effect.

22                 “(ii) REVOCATION OF PREEMPTION.—  
23                 The preemption of a non-domicile State’s  
24                 health insurance licensure laws pursuant to  
25                 this subparagraph, shall be terminated

1           upon the occurrence of either of the fol-  
2           lowing:

3                   “(I) APPROVAL OR DENIAL OF  
4                   APPLICATION.—The approval of denial  
5                   of an insurer’s licensure application,  
6                   following the laws and regulations of  
7                   the non-domicile State with respect to  
8                   licensure.

9                   “(II) DETERMINATION OF MATE-  
10                  RIAL VIOLATION.—A determination by  
11                  a non-domicile State that an insurer  
12                  operating in a non-domicile State pur-  
13                  suant to the preemption provided for  
14                  in this subparagraph is in material  
15                  violation of the insurance laws (other  
16                  than licensure and with respect to the  
17                  terms of subtitle A of title XXIX of  
18                  the Public Health Service Act (relat-  
19                  ing to rating and benefits added by  
20                  the Health Insurance Marketplace  
21                  Modernization and Affordability Act  
22                  of 2006)) of such State.

23                  “(B) NO PROHIBITION ON PROMOTION.—  
24                  Nothing in this paragraph shall be construed to  
25                  prohibit a small business health plan or an in-

1 surer from promoting coverage prior to the ex-  
2 piration of the 90-day period provided for in  
3 subparagraph (A), except that no enrollment or  
4 collection of contributions shall occur before the  
5 expiration of such 90-day period.

6 “(C) LICENSURE.—Except with respect to  
7 the application of the temporary preemption  
8 provision of this paragraph, nothing in this part  
9 shall be construed to limit the requirement that  
10 insurers issuing coverage to small business  
11 health plans shall be licensed in each State in  
12 which the small business health plans operate.

13 “(D) SERVICING BY LICENSED INSUR-  
14 ERS.—Notwithstanding subparagraph (C), the  
15 requirements of this subsection may also be sat-  
16 isfied if the participating employers of a small  
17 business health plan are serviced by a licensed  
18 insurer in that State, even where such insurer  
19 is not the insurer of such small business health  
20 plan in the State in which such small business  
21 health plan is domiciled.

22 **“SEC. 806. REQUIREMENTS FOR APPLICATION AND RE-**  
23 **LATED REQUIREMENTS.**

24 “(a) FILING FEE.—Under the procedure prescribed  
25 pursuant to section 802(a), a small business health plan

1 shall pay to the applicable authority at the time of filing  
2 an application for certification under this part a filing fee  
3 in the amount of \$5,000, which shall be available in the  
4 case of the Secretary, to the extent provided in appropria-  
5 tion Acts, for the sole purpose of administering the certifi-  
6 cation procedures applicable with respect to small business  
7 health plans.

8 “(b) INFORMATION TO BE INCLUDED IN APPLICA-  
9 TION FOR CERTIFICATION.—An application for certifi-  
10 cation under this part meets the requirements of this sec-  
11 tion only if it includes, in a manner and form which shall  
12 be prescribed by the applicable authority by regulation, at  
13 least the following information:

14 “(1) IDENTIFYING INFORMATION.—The names  
15 and addresses of—

16 “(A) the sponsor; and

17 “(B) the members of the board of trustees  
18 of the plan.

19 “(2) STATES IN WHICH PLAN INTENDS TO DO  
20 BUSINESS.—The States in which participants and  
21 beneficiaries under the plan are to be located and  
22 the number of them expected to be located in each  
23 such State.

24 “(3) BONDING REQUIREMENTS.—Evidence pro-  
25 vided by the board of trustees that the bonding re-

1        requirements of section 412 will be met as of the date  
2        of the application or (if later) commencement of op-  
3        erations.

4            “(4) PLAN DOCUMENTS.—A copy of the docu-  
5        ments governing the plan (including any bylaws and  
6        trust agreements), the summary plan description,  
7        and other material describing the benefits that will  
8        be provided to participants and beneficiaries under  
9        the plan.

10           “(5) AGREEMENTS WITH SERVICE PRO-  
11        VIDERS.—A copy of any agreements between the  
12        plan, health insurance issuer, and contract adminis-  
13        trators and other service providers.

14           “(c) FILING NOTICE OF CERTIFICATION WITH  
15        STATES.—A certification granted under this part to a  
16        small business health plan shall not be effective unless  
17        written notice of such certification is filed with the appli-  
18        cable State authority of each State in which the small  
19        business health plans operate.

20           “(d) NOTICE OF MATERIAL CHANGES.—In the case  
21        of any small business health plan certified under this part,  
22        descriptions of material changes in any information which  
23        was required to be submitted with the application for the  
24        certification under this part shall be filed in such form  
25        and manner as shall be prescribed by the applicable au-

1 thority by regulation. The applicable authority may re-  
2 quire by regulation prior notice of material changes with  
3 respect to specified matters which might serve as the basis  
4 for suspension or revocation of the certification.

5 **“SEC. 807. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**  
6 **MINATION.**

7 “A small business health plan which is or has been  
8 certified under this part may terminate (upon or at any  
9 time after cessation of accruals in benefit liabilities) only  
10 if the board of trustees, not less than 60 days before the  
11 proposed termination date—

12 “(1) provides to the participants and bene-  
13 ficiaries a written notice of intent to terminate stat-  
14 ing that such termination is intended and the pro-  
15 posed termination date;

16 “(2) develops a plan for winding up the affairs  
17 of the plan in connection with such termination in  
18 a manner which will result in timely payment of all  
19 benefits for which the plan is obligated; and

20 “(3) submits such plan in writing to the appli-  
21 cable authority.

22 Actions required under this section shall be taken in such  
23 form and manner as may be prescribed by the applicable  
24 authority by regulation.

1 **“SEC. 808. DEFINITIONS AND RULES OF CONSTRUCTION.**

2 “(a) DEFINITIONS.—For purposes of this part—

3 “(1) AFFILIATED MEMBER.—The term ‘affili-  
4 ated member’ means, in connection with a sponsor—

5 “(A) a person who is otherwise eligible to  
6 be a member of the sponsor but who elects an  
7 affiliated status with the sponsor, or

8 “(B) in the case of a sponsor with mem-  
9 bers which consist of associations, a person who  
10 is a member or employee of any such associa-  
11 tion and elects an affiliated status with the  
12 sponsor.

13 “(2) APPLICABLE AUTHORITY.—The term ‘ap-  
14 plicable authority’ means the Secretary of Labor, ex-  
15 cept that, in connection with any exercise of the Sec-  
16 retary’s authority with respect to which the Sec-  
17 retary is required under section 506(d) to consult  
18 with a State, such term means the Secretary, in con-  
19 sultation with such State.

20 “(3) APPLICABLE STATE AUTHORITY.—The  
21 term ‘applicable State authority’ means, with respect  
22 to a health insurance issuer in a State, the State in-  
23 surance commissioner or official or officials des-  
24 ignated by the State to enforce the requirements of  
25 title XXVII of the Public Health Service Act for the  
26 State involved with respect to such issuer.

1           “(4) GROUP HEALTH PLAN.—The term ‘group  
2           health plan’ has the meaning provided in section  
3           733(a)(1) (after applying subsection (b) of this sec-  
4           tion).

5           “(5) HEALTH INSURANCE COVERAGE.—The  
6           term ‘health insurance coverage’ has the meaning  
7           provided in section 733(b)(1), except that such term  
8           shall not include excepted benefits (as defined in sec-  
9           tion 733(c)).

10          “(6) HEALTH INSURANCE ISSUER.—The term  
11          ‘health insurance issuer’ has the meaning provided  
12          in section 733(b)(2).

13          “(7) INDIVIDUAL MARKET.—

14                 “(A) IN GENERAL.—The term ‘individual  
15                 market’ means the market for health insurance  
16                 coverage offered to individuals other than in  
17                 connection with a group health plan.

18                 “(B) TREATMENT OF VERY SMALL  
19                 GROUPS.—

20                         “(i) IN GENERAL.—Subject to clause  
21                         (ii), such term includes coverage offered in  
22                         connection with a group health plan that  
23                         has fewer than 2 participants as current  
24                         employees or participants described in sec-



1                   tion 732(d)(3) on the first day of the plan  
2                   year.

3                   “(ii) STATE EXCEPTION.—Clause (i)  
4                   shall not apply in the case of health insur-  
5                   ance coverage offered in a State if such  
6                   State regulates the coverage described in  
7                   such clause in the same manner and to the  
8                   same extent as coverage in the small group  
9                   market (as defined in section 2791(e)(5) of  
10                  the Public Health Service Act) is regulated  
11                  by such State.

12                  “(8) MEDICAL CARE.—The term ‘medical care’  
13                  has the meaning provided in section 733(a)(2).

14                  “(9) PARTICIPATING EMPLOYER.—The term  
15                  ‘participating employer’ means, in connection with a  
16                  small business health plan, any employer, if any in-  
17                  dividual who is an employee of such employer, a  
18                  partner in such employer, or a self-employed indi-  
19                  vidual who is such employer (or any dependent, as  
20                  defined under the terms of the plan, of such indi-  
21                  vidual) is or was covered under such plan in connec-  
22                  tion with the status of such individual as such an  
23                  employee, partner, or self-employed individual in re-  
24                  lation to the plan.

1           “(10) SMALL EMPLOYER.—The term ‘small em-  
2           ployer’ means, in connection with a group health  
3           plan with respect to a plan year, a small employer  
4           as defined in section 2791(e)(4).

5           “(11) TRADE ASSOCIATION AND PROFESSIONAL  
6           ASSOCIATION.—The terms ‘trade association’ and  
7           ‘professional association’ mean an entity that meets  
8           the requirements of section 1.501(c)(6)-1 of title 26,  
9           Code of Federal Regulations (as in effect on the  
10          date of enactment of this Act).

11          “(b) RULE OF CONSTRUCTION.—For purposes of de-  
12         termining whether a plan, fund, or program is an em-  
13         ployee welfare benefit plan which is a small business  
14         health plan, and for purposes of applying this title in con-  
15         nection with such plan, fund, or program so determined  
16         to be such an employee welfare benefit plan—

17                 “(1) in the case of a partnership, the term ‘em-  
18                 ployer’ (as defined in section 3(5)) includes the part-  
19                 nership in relation to the partners, and the term  
20                 ‘employee’ (as defined in section 3(6)) includes any  
21                 partner in relation to the partnership; and

22                 “(2) in the case of a self-employed individual,  
23                 the term ‘employer’ (as defined in section 3(5)) and  
24                 the term ‘employee’ (as defined in section 3(6)) shall  
25                 include such individual.

1       “(c) RENEWAL.—Notwithstanding any provision of  
2 law to the contrary, a participating employer in a small  
3 business health plan shall not be deemed to be a plan  
4 sponsor in applying requirements relating to coverage re-  
5 newal.

6       “(d) HEALTH SAVINGS ACCOUNTS.—Nothing in this  
7 part shall be construed to inhibit the development of  
8 health savings accounts pursuant to section 223 of the In-  
9 ternal Revenue Code of 1986.”.

10       (b) CONFORMING AMENDMENTS TO PREEMPTION  
11 RULES.—

12               (1) Section 514(b)(6) of such Act (29 U.S.C.  
13 1144(b)(6)) is amended by adding at the end the  
14 following new subparagraph:

15       “(E) The preceding subparagraphs of this paragraph  
16 do not apply with respect to any State law in the case  
17 of a small business health plan which is certified under  
18 part 8.”.

19               (2) Section 514 of such Act (29 U.S.C. 1144)  
20 is amended—

21                       (A) in subsection (b)(4), by striking “Sub-  
22 section (a)” and inserting “Subsections (a) and  
23 (d)”;

24                       (B) in subsection (b)(5), by striking “sub-  
25 section (a)” in subparagraph (A) and inserting

1 “subsection (a) of this section and subsections  
2 (a)(2)(B) and (b) of section 805”, and by strik-  
3 ing “subsection (a)” in subparagraph (B) and  
4 inserting “subsection (a) of this section or sub-  
5 section (a)(2)(B) or (b) of section 805”;

6 (C) by redesignating subsection (d) as sub-  
7 section (e); and

8 (D) by inserting after subsection (c) the  
9 following new subsection:

10 “(d)(1) Except as provided in subsection (b)(4), the  
11 provisions of this title shall supersede any and all State  
12 laws insofar as they may now or hereafter preclude a  
13 health insurance issuer from offering health insurance cov-  
14 erage in connection with a small business health plan  
15 which is certified under part 8.

16 “(2) In any case in which health insurance coverage  
17 of any policy type is offered under a small business health  
18 plan certified under part 8 to a participating employer op-  
19 erating in such State, the provisions of this title shall su-  
20 persede any and all laws of such State insofar as they may  
21 establish rating and benefit requirements that would oth-  
22 erwise apply to such coverage, provided the requirements  
23 of subtitle A of title XXIX of the Public Health Service  
24 Act (as added by title II of the Health Insurance Market-

1 place Modernization and Affordability Act of 2006) (con-  
2 cerning health plan rating and benefits) are met.”.

3 (c) PLAN SPONSOR.—Section 3(16)(B) of such Act  
4 (29 U.S.C. 102(16)(B)) is amended by adding at the end  
5 the following new sentence: “Such term also includes a  
6 person serving as the sponsor of a small business health  
7 plan under part 8.”.

8 (d) SAVINGS CLAUSE.—Section 731(c) of such Act  
9 is amended by inserting “or part 8” after “this part”.

10 (e) CLERICAL AMENDMENT.—The table of contents  
11 in section 1 of the Employee Retirement Income Security  
12 Act of 1974 is amended by inserting after the item relat-  
13 ing to section 734 the following new items:

“PART 8—RULES GOVERNING SMALL BUSINESS HEALTH PLANS

“801. Small business health plans.

“802. Certification of small business health plans.

“803. Requirements relating to sponsors and boards of trustees.

“804. Participation and coverage requirements.

“805. Other requirements relating to plan documents, contribution rates, and  
benefit options.

“806. Requirements for application and related requirements.

“807. Notice requirements for voluntary termination.

“808. Definitions and rules of construction.”.

14 **SEC. 102. COOPERATION BETWEEN FEDERAL AND STATE**  
15 **AUTHORITIES.**

16 Section 506 of the Employee Retirement Income Se-  
17 curity Act of 1974 (29 U.S.C. 1136) is amended by adding  
18 at the end the following new subsection:

19 “(d) CONSULTATION WITH STATES WITH RESPECT  
20 TO SMALL BUSINESS HEALTH PLANS.—

1           “(1) AGREEMENTS WITH STATES.—The Sec-  
2       retary shall consult with the State recognized under  
3       paragraph (2) with respect to a small business  
4       health plan regarding the exercise of—

5           “(A) the Secretary’s authority under sec-  
6       tions 502 and 504 to enforce the requirements  
7       for certification under part 8; and

8           “(B) the Secretary’s authority to certify  
9       small business health plans under part 8 in ac-  
10      cordance with regulations of the Secretary ap-  
11      plicable to certification under part 8.

12          “(2) RECOGNITION OF DOMICILE STATE.—In  
13      carrying out paragraph (1), the Secretary shall en-  
14      sure that only one State will be recognized, with re-  
15      spect to any particular small business health plan,  
16      as the State with which consultation is required. In  
17      carrying out this paragraph such State shall be the  
18      domicile State, as defined in section 805(c).”.

19   **SEC. 103. EFFECTIVE DATE AND TRANSITIONAL AND**  
20           **OTHER RULES.**

21          (a) EFFECTIVE DATE.—The amendments made by  
22      this title shall take effect 12 months after the date of the  
23      enactment of this Act. The Secretary of Labor shall first  
24      issue all regulations necessary to carry out the amend-

1 ments made by this title within 6 months after the date  
2 of the enactment of this Act.

3 (b) TREATMENT OF CERTAIN EXISTING HEALTH  
4 BENEFITS PROGRAMS.—

5 (1) IN GENERAL.—In any case in which, as of  
6 the date of the enactment of this Act, an arrange-  
7 ment is maintained in a State for the purpose of  
8 providing benefits consisting of medical care for the  
9 employees and beneficiaries of its participating em-  
10 ployers, at least 200 participating employers make  
11 contributions to such arrangement, such arrange-  
12 ment has been in existence for at least 10 years, and  
13 such arrangement is licensed under the laws of one  
14 or more States to provide such benefits to its par-  
15 ticipating employers, upon the filing with the appli-  
16 cable authority (as defined in section 808(a)(2) of  
17 the Employee Retirement Income Security Act of  
18 1974 (as amended by this subtitle)) by the arrange-  
19 ment of an application for certification of the ar-  
20 rangement under part 8 of subtitle B of title I of  
21 such Act—

22 (A) such arrangement shall be deemed to  
23 be a group health plan for purposes of title I  
24 of such Act;

1 (B) the requirements of sections 801(a)  
2 and 803(a) of the Employee Retirement Income  
3 Security Act of 1974 shall be deemed met with  
4 respect to such arrangement;

5 (C) the requirements of section 803(b) of  
6 such Act shall be deemed met, if the arrange-  
7 ment is operated by a board of trustees which—

8 (i) is elected by the participating em-  
9 ployers, with each employer having one  
10 vote; and

11 (ii) has complete fiscal control over  
12 the arrangement and which is responsible  
13 for all operations of the arrangement;

14 (D) the requirements of section 804(a) of  
15 such Act shall be deemed met with respect to  
16 such arrangement; and

17 (E) the arrangement may be certified by  
18 any applicable authority with respect to its op-  
19 erations in any State only if it operates in such  
20 State on the date of certification.

21 The provisions of this subsection shall cease to apply  
22 with respect to any such arrangement at such time  
23 after the date of the enactment of this Act as the  
24 applicable requirements of this subsection are not  
25 met with respect to such arrangement or at such



1 time that the arrangement provides coverage to par-  
2 ticipants and beneficiaries in any State other than  
3 the States in which coverage is provided on such  
4 date of enactment.

5 (2) DEFINITIONS.—For purposes of this sub-  
6 section, the terms “group health plan”, “medical  
7 care”, and “participating employer” shall have the  
8 meanings provided in section 808 of the Employee  
9 Retirement Income Security Act of 1974, except  
10 that the reference in paragraph (7) of such section  
11 to an “small business health plan” shall be deemed  
12 a reference to an arrangement referred to in this  
13 subsection.

## 14 **TITLE II—MARKET RELIEF**

### 15 **SEC. 201. MARKET RELIEF.**

16 The Public Health Service Act (42 U.S.C. 201 et  
17 seq.) is amended by adding at the end the following:

## 18 **“TITLE XXIX—HEALTH CARE IN-** 19 **SURANCE MARKETPLACE** 20 **MODERNIZATION**

### 21 **“SEC. 2901. GENERAL INSURANCE DEFINITIONS.**

22 “In this title, the terms ‘health insurance coverage’,  
23 ‘health insurance issuer’, ‘group health plan’, and ‘indi-  
24 vidual health insurance’ shall have the meanings given  
25 such terms in section 2791.

# **“Subtitle A—Market Relief**

## **“PART I—RATING REQUIREMENTS**

### **“SEC. 2911. DEFINITIONS.**

“(a) GENERAL DEFINITIONS.—In this part:

“(1) ADOPTING STATE.—The term ‘adopting State’ means a State that, with respect to the small group market, has enacted either the Model Small Group Rating Rules or, if applicable to such State, the Transitional Model Small Group Rating Rules, each in their entirety and as the exclusive laws of the State that relate to rating in the small group insurance market.

“(2) APPLICABLE STATE AUTHORITY.—The term ‘applicable State authority’ means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the insurance laws of such State.

“(3) BASE PREMIUM RATE.—The term ‘base premium rate’ means, for each class of business with respect to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar

1 case characteristics for health benefit plans with the  
2 same or similar coverage

3 “(4) ELIGIBLE INSURER.—The term ‘eligible  
4 insurer’ means a health insurance issuer that is li-  
5 censed in a State and that—

6 “(A) notifies the Secretary, not later than  
7 30 days prior to the offering of coverage de-  
8 scribed in this subparagraph, that the issuer in-  
9 tends to offer health insurance coverage con-  
10 sistent with the Model Small Group Rating  
11 Rules or, as applicable, transitional small group  
12 rating rules in a State;

13 “(B) notifies the insurance department of  
14 a nonadopting State (or other State agency),  
15 not later than 30 days prior to the offering of  
16 coverage described in this subparagraph, that  
17 the issuer intends to offer small group health  
18 insurance coverage in that State consistent with  
19 the Model Small Group Rating Rules, and pro-  
20 vides with such notice a copy of any insurance  
21 policy that it intends to offer in the State, its  
22 most recent annual and quarterly financial re-  
23 ports, and any other information required to be  
24 filed with the insurance department of the State  
25 (or other State agency); and

1           “(C) includes in the terms of the health in-  
2           surance coverage offered in nonadopting States  
3           (including in the terms of any individual certifi-  
4           cates that may be offered to individuals in con-  
5           nection with such group health coverage) and  
6           filed with the State pursuant to subparagraph  
7           (B), a description in the insurer’s contract of  
8           the Model Small Group Rating Rules and an af-  
9           firmation that such Rules are included in the  
10          terms of such contract.

11          “(5) HEALTH INSURANCE COVERAGE.—The  
12          term ‘health insurance coverage’ means any coverage  
13          issued in the small group health insurance market,  
14          except that such term shall not include excepted  
15          benefits (as defined in section 2791(c)).

16          “(6) INDEX RATE.—The term ‘index rate’  
17          means for each class of business with respect to the  
18          rating period for small employers with similar case  
19          characteristics, the arithmetic average of the appli-  
20          cable base premium rate and the corresponding  
21          highest premium rate.

22          “(7) MODEL SMALL GROUP RATING RULES.—  
23          The term ‘Model Small Group Rating Rules’ means  
24          the rules set forth in subsection (b).

1           “(8) NONADOPTING STATE.—The term ‘non-  
2       adopting State’ means a State that is not an adopt-  
3       ing State.

4           “(9) SMALL GROUP INSURANCE MARKET.—The  
5       term ‘small group insurance market’ shall have the  
6       meaning given the term ‘small group market’ in sec-  
7       tion 2791(e)(5).

8           “(10) STATE LAW.—The term ‘State law’  
9       means all laws, decisions, rules, regulations, or other  
10      State actions (including actions by a State agency)  
11      having the effect of law, of any State.

12          “(b) DEFINITION RELATING TO MODEL SMALL  
13      GROUP RATING RULES.—The term ‘Model Small Group  
14      Rating Rules’ means adapted rating rules drawn from the  
15      Adopted Small Employer Health Insurance Availability  
16      Model Act of 1993 of the National Association of Insur-  
17      ance Commissioners consisting of the following:

18           “(1) PREMIUM RATES.—Premium rates for  
19      health benefit plans to which this title applies shall  
20      be subject to the following provisions relating to pre-  
21      miums:

22           “(A) INDEX RATE.—The index rate for a  
23      rating period for any class of business shall not  
24      exceed the index rate for any other class of  
25      business by more than 20 percent.

1           “(B) CLASS OF BUSINESSES.—With re-  
2           spect to a class of business, the premium rates  
3           charged during a rating period to small employ-  
4           ers with similar case characteristics for the  
5           same or similar coverage or the rates that could  
6           be charged to such employers under the rating  
7           system for that class of business, shall not vary  
8           from the index rate by more than 25 percent of  
9           the index rate under subparagraph (A).

10           “(C) INCREASES FOR NEW RATING PERI-  
11           ODS.—The percentage increase in the premium  
12           rate charged to a small employer for a new rat-  
13           ing period may not exceed the sum of the fol-  
14           lowing:

15           “(i) The percentage change in the new  
16           business premium rate measured from the  
17           first day of the prior rating period to the  
18           first day of the new rating period. In the  
19           case of a health benefit plan into which the  
20           small employer carrier is no longer enroll-  
21           ing new small employers, the small em-  
22           ployer carrier shall use the percentage  
23           change in the base premium rate, except  
24           that such change shall not exceed, on a  
25           percentage basis, the change in the new

1 business premium rate for the most similar  
2 health benefit plan into which the small  
3 employer carrier is actively enrolling new  
4 small employers.

5 “(ii) Any adjustment, not to exceed  
6 15 percent annually and adjusted pro rata  
7 for rating periods of less than 1 year, due  
8 to the claim experience, health status or  
9 duration of coverage of the employees or  
10 dependents of the small employer as deter-  
11 mined from the small employer carrier’s  
12 rate manual for the class of business in-  
13 volved.

14 “(iii) Any adjustment due to change  
15 in coverage or change in the case charac-  
16 teristics of the small employer as deter-  
17 mined from the small employer carrier’s  
18 rate manual for the class of business.

19 “(D) UNIFORM APPLICATION OF ADJUST-  
20 MENTS.—Adjustments in premium rates for  
21 claim experience, health status, or duration of  
22 coverage shall not be charged to individual em-  
23 ployees or dependents. Any such adjustment  
24 shall be applied uniformly to the rates charged

1           for all employees and dependents of the small  
2           employer.

3           “(E) USE OF INDUSTRY AS A CASE CHAR-  
4           ACTERISTIC.—A small employer carrier may  
5           utilize industry as a case characteristic in es-  
6           tablishing premium rates, so long as the highest  
7           rate factor associated with any industry classi-  
8           fication does not exceed the lowest rate factor  
9           associated with any industry classification by  
10          more than 15 percent.

11          “(F) CONSISTENT APPLICATION OF FAC-  
12          TORS.—Small employer carriers shall apply rat-  
13          ing factors, including case characteristics, con-  
14          sistently with respect to all small employers in  
15          a class of business. Rating factors shall produce  
16          premiums for identical groups which differ only  
17          by the amounts attributable to plan design and  
18          do not reflect differences due to the nature of  
19          the groups assumed to select particular health  
20          benefit plans.

21          “(G) TREATMENT OF PLANS AS HAVING  
22          SAME RATING PERIOD.—A small employer car-  
23          rier shall treat all health benefit plans issued or  
24          renewed in the same calendar month as having  
25          the same rating period.



1                   “(H) RESTRICTED NETWORK PROVI-  
2                   SIONS.—For purposes of this subsection, a  
3                   health benefit plan that contains a restricted  
4                   network provision shall not be considered simi-  
5                   lar coverage to a health benefit plan that does  
6                   not contain a similar provision if the restriction  
7                   of benefits to network providers results in sub-  
8                   stantial differences in claims costs.

9                   “(I) PROHIBITION ON USE OF CERTAIN  
10                  CASE CHARACTERISTICS.—The small employer  
11                  carrier shall not use case characteristics other  
12                  than age, gender, industry, geographic area,  
13                  family composition, group size, and participa-  
14                  tion in wellness programs without prior ap-  
15                  proval of the applicable State authority.

16                  “(J) REQUIRE COMPLIANCE.—Premium  
17                  rates for small business health benefit plans  
18                  shall comply with the requirements of this sub-  
19                  section notwithstanding any assessments paid  
20                  or payable by a small employer carrier as re-  
21                  quired by a State’s small employer carrier rein-  
22                  surance program.

23                  “(2) ESTABLISHMENT OF SEPARATE CLASS OF  
24                  BUSINESS.—Subject to paragraph (3), a small em-  
25                  ployer carrier may establish a separate class of busi-

1       ness only to reflect substantial differences in ex-  
2       pected claims experience or administrative costs re-  
3       lated to the following:

4               “(A) The small employer carrier uses more  
5       than one type of system for the marketing and  
6       sale of health benefit plans to small employers.

7               “(B) The small employer carrier has ac-  
8       quired a class of business from another small  
9       employer carrier.

10              “(C) The small employer carrier provides  
11       coverage to one or more association groups that  
12       meet the requirements of this title.

13              “(3) LIMITATION.—A small employer carrier  
14       may establish up to 9 separate classes of business  
15       under paragraph (2), excluding those classes of busi-  
16       ness related to association groups under this title.

17              “(4) ADDITIONAL GROUPINGS.—The applicable  
18       State authority may approve the establishment of  
19       additional distinct groupings by small employer car-  
20       riers upon the submission of an application to the  
21       applicable State authority and a finding by the ap-  
22       plicable State authority that such action would en-  
23       hance the efficiency and fairness of the small em-  
24       ployer insurance marketplace.

1           “(5) LIMITATION ON TRANSFERS.—A small em-  
2           ployer carrier shall not transfer a small employer in-  
3           voluntarily into or out of a class of business. A small  
4           employer carrier shall not offer to transfer a small  
5           employer into or out of a class of business unless  
6           such offer is made to transfer all small employers in  
7           the class of business without regard to case charac-  
8           teristics, claim experience, health status or duration  
9           of coverage since issue.

10           “(6) SUSPENSION OF THE RULES.—The appli-  
11           cable State authority may suspend, for a specified  
12           period, the application of paragraph (1) to the pre-  
13           mium rates applicable to one or more small employ-  
14           ers included within a class of business of a small em-  
15           ployer carrier for one or more rating periods upon  
16           a filing by the small employer carrier and a finding  
17           by the applicable State authority either that the sus-  
18           pension is reasonable when considering the financial  
19           condition of the small employer carrier or that the  
20           suspension would enhance the efficiency and fairness  
21           of the marketplace for small employer health insur-  
22           ance.

23   **“SEC. 2912. RATING RULES.**

24           “(a) IMPLEMENTATION OF MODEL SMALL GROUP  
25   RATING RULES.—Not later than 6 months after the en-

1 actment of this title, the Secretary shall promulgate regu-  
2 lations implementing the Model Small Group Rating Rules  
3 pursuant to section 2911(b).

4 “(b) TRANSITIONAL MODEL SMALL GROUP RATING  
5 RULES.—

6 “(1) IN GENERAL.—Not later than 6 months  
7 after the date of enactment of this title and to the  
8 extent necessary to provide for a graduated transi-  
9 tion to the Model Small Group Rating Rules, the  
10 Secretary, in consultation with the NAIC, shall pro-  
11 mulgate Transitional Model Small Group Rating  
12 Rules in accordance with this subsection, which shall  
13 be applicable with respect to certain non-adopting  
14 States for a period of not to exceed 5 years from the  
15 date of the promulgation of the Model Small Group  
16 Rating Rules pursuant to subsection (a). After the  
17 expiration of such 5-year period, the transitional  
18 model small group rating rules shall expire, and the  
19 Model Small Group Rating Rules shall then apply  
20 with respect to all non-adopting States pursuant to  
21 the provisions of this part.

22 “(2) PREMIUM VARIATION DURING TRANSI-  
23 TION.—

24 “(A) TRANSITION STATES.—During the  
25 transition period described in paragraph (1),

1           small group health insurance coverage offered  
2           in a non-adopting State that had in place pre-  
3           mium rating band requirements or premium  
4           limits that varied by less than 12.5 percent  
5           from the index rate within a class of business  
6           on the date of enactment of this title, shall not  
7           be subject to the premium variation provision of  
8           section 2911(b)(1) of the Model Small Group  
9           Rating Rules and shall instead be subject to the  
10          Transitional Model Small Group Rating Rules  
11          as promulgated by the Secretary pursuant to  
12          paragraph (1).

13               “(B) NON-TRANSITION STATES.—During  
14          the transition period described in paragraph  
15          (1), and thereafter, small group health insur-  
16          ance coverage offered in a non-adopting State  
17          that had in place premium rating band require-  
18          ments or premium limits that varied by more  
19          than 12.5 percent from the index rate within a  
20          class of business on the date of enactment of  
21          this title, shall not be subject to the Transi-  
22          tional Model Small Group Rating Rules as pro-  
23          mulgated by the Secretary pursuant to para-  
24          graph (1), and instead shall be subject to the  
25          Model Small Group Rating Rules effective be-

1           ginning with the first plan year or calendar  
2           year following the promulgation of such Rules,  
3           at the election of the eligible insurer.

4           “(3) TRANSITIONING OF OLD BUSINESS.—In  
5           developing the transitional model small group rating  
6           rules under paragraph (1), the Secretary shall, after  
7           consultation with the National Association of Insur-  
8           ance Commissioners and representatives of insurers  
9           operating in the small group health insurance mar-  
10          ket, promulgate special transition standards and  
11          timelines with respect to independent rating classes  
12          for old and new business, to the extent reasonably  
13          necessary to protect health insurance consumers and  
14          to ensure a stable and fair transition for old and  
15          new market entrants.

16          “(4) OTHER TRANSITIONAL AUTHORITY.—In  
17          developing the Transitional Model Small Group Rat-  
18          ing Rules under paragraph (1), the Secretary shall  
19          provide for the application of the Transitional Model  
20          Small Group Rating Rules in transition States as  
21          the Secretary may determine necessary for a an ef-  
22          fective transition.

23          “(c) MARKET RE-ENTRY.—

24                 “(1) IN GENERAL.—Notwithstanding any other  
25          provision of law, a health insurance issuer that has

1 voluntarily withdrawn from providing coverage in the  
2 small group market prior to the date of enactment  
3 of the Health Insurance Marketplace Modernization  
4 and Affordability Act of 2006 shall not be excluded  
5 from re-entering such market on a date that is more  
6 than 180 days after such date of enactment.

7 “(2) TERMINATION.—The provision of this sub-  
8 section shall terminate on the date that is 24  
9 months after the date of enactment of the Health  
10 Insurance Marketplace Modernization and Afford-  
11 ability Act of 2006.

12 **“SEC. 2913. APPLICATION AND PREEMPTION.**

13 “(a) SUPERSEDING OF STATE LAW.—

14 “(1) IN GENERAL.—This part shall supersede  
15 any and all State laws of a non-adopting State inso-  
16 far as such State laws (whether enacted prior to or  
17 after the date of enactment of this subtitle) relate to  
18 rating in the small group insurance market as ap-  
19 plied to an eligible insurer, or small group health in-  
20 surance coverage issued by an eligible insurer, in-  
21 cluding with respect to coverage issued to a small  
22 employer through a small business health plan, in a  
23 State.

24 “(2) NONADOPTING STATES.—This part shall  
25 supersede any and all State laws of a nonadopting

1 State insofar as such State laws (whether enacted  
2 prior to or after the date of enactment of this sub-  
3 title)—

4 “(A) prohibit an eligible insurer from of-  
5 fering, marketing, or implementing small group  
6 health insurance coverage consistent with the  
7 Model Small Group Rating Rules or transitional  
8 model small group rating rules; or

9 “(B) have the effect of retaliating against  
10 or otherwise punishing in any respect an eligible  
11 insurer for offering, marketing, or imple-  
12 menting small group health insurance coverage  
13 consistent with the Model Small Group Rating  
14 Rules or transitional model small group rating  
15 rules.

16 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

17 “(1) NONAPPLICATION TO ADOPTING STATES.—  
18 Subsection (a) shall not apply with respect to adopt-  
19 ing states.

20 “(2) NONAPPLICATION TO CERTAIN INSUR-  
21 ERS.—Subsection (a) shall not apply with respect to  
22 insurers that do not qualify as eligible insurers that  
23 offer small group health insurance coverage in a  
24 nonadopting State.



1           “(3) NONAPPLICATION WHERE OBTAINING RE-  
2       LIEF UNDER STATE LAW.—Subsection (a)(1) shall  
3       not supercede any State law in a nonadopting State  
4       to the extent necessary to permit individuals or the  
5       insurance department of the State (or other State  
6       agency) to obtain relief under State law to require  
7       an eligible insurer to comply with the Model Small  
8       Group Rating Rules or transitional model small  
9       group rating rules.

10          “(4) NO EFFECT ON PREEMPTION.—In no case  
11       shall this part be construed to limit or affect in any  
12       manner the preemptive scope of sections 502 and  
13       514 of the Employee Retirement Income Security  
14       Act of 1974. In no case shall this part be construed  
15       to create any cause of action under Federal or State  
16       law or enlarge or affect any remedy available under  
17       the Employee Retirement Income Security Act of  
18       1974

19          “(c) EFFECTIVE DATE.—This section shall apply, at  
20       the election of the eligible insurer, beginning in the first  
21       plan year or the first calendar year following the issuance  
22       of the final rules by the Secretary under the Model Small  
23       Group Rating Rules or, as applicable, the Transitional  
24       Model Small Group Rating Rules, but in no event earlier

1 than the date that is 12 months after the date of enact-  
2 ment of this title.

3 **“SEC. 2914. CIVIL ACTIONS AND JURISDICTION.**

4 “(a) IN GENERAL.—The courts of the United States  
5 shall have exclusive jurisdiction over civil actions involving  
6 the interpretation of this part.

7 “(b) ACTIONS.—An eligible insurer may bring an ac-  
8 tion in the district courts of the United States for injunc-  
9 tive or other equitable relief against any officials or agents  
10 of a nonadopting State in connection with any conduct or  
11 action, or proposed conduct or action, by such officials or  
12 agents which violates, or which would if undertaken vio-  
13 late, section 2913.

14 “(c) DIRECT FILING IN COURT OF APPEALS.—At the  
15 election of the eligible insurer, an action may be brought  
16 under subsection (b) directly in the United States Court  
17 of Appeals for the circuit in which the nonadopting State  
18 is located by the filing of a petition for review in such  
19 Court.

20 “(d) EXPEDITED REVIEW.—

21 “(1) DISTRICT COURT.—In the case of an ac-  
22 tion brought in a district court of the United States  
23 under subsection (b), such court shall complete such  
24 action, including the issuance of a judgment, prior  
25 to the end of the 120-day period beginning on the

1 date on which such action is filed, unless all parties  
2 to such proceeding agree to an extension of such pe-  
3 riod.

4 “(2) COURT OF APPEALS.—In the case of an  
5 action brought directly in a United States Court of  
6 Appeal under subsection (c), or in the case of an ap-  
7 peal of an action brought in a district court under  
8 subsection (b), such Court shall complete all action  
9 on the petition, including the issuance of a judg-  
10 ment, prior to the end of the 60-day period begin-  
11 ning on the date on which such petition is filed with  
12 the Court, unless all parties to such proceeding  
13 agree to an extension of such period.

14 “(e) STANDARD OF REVIEW.—A court in an action  
15 filed under this section, shall render a judgment based on  
16 a review of the merits of all questions presented in such  
17 action and shall not defer to any conduct or action, or  
18 proposed conduct or action, of a nonadopting State.

19 **“SEC. 2915. ONGOING REVIEW.**

20 “Not later than 5 years after the date on which the  
21 Model Small Group Rating Rules are issued under this  
22 part, and every 5 years thereafter, the Secretary, in con-  
23 sultation with the National Association of Insurance Com-  
24 missioners, shall prepare and submit to the appropriate  
25 committees of Congress a report that assesses the effect

1 of the Model Small Group Rating Rules on access, cost,  
2 and market functioning in the small group market. Such  
3 report may, if the Secretary, in consultation with the Na-  
4 tional Association of Insurance Commissioners, deter-  
5 mines such is appropriate for improving access, costs, and  
6 market functioning, contain legislative proposals for rec-  
7 ommended modification to such Model Small Group Rat-  
8 ing Rules.

9 **“PART II—AFFORDABLE PLANS**

10 **“SEC. 2921. DEFINITIONS.**

11 “In this part:

12 “(1) ADOPTING STATE.—The term ‘adopting  
13 State’ means a State that has enacted the Benefit  
14 Choice Standards in their entirety and as the exclu-  
15 sive laws of the State that relate to benefit, service,  
16 and provider mandates in the group and individual  
17 insurance markets.

18 “(2) BENEFIT CHOICE STANDARDS.—The term  
19 ‘Benefit Choice Standards’ means the Standards  
20 issued under section 2922.

21 “(3) ELIGIBLE INSURER.—The term ‘eligible  
22 insurer’ means a health insurance issuer that is li-  
23 censed in a nonadopting State and that—

24 “(A) notifies the Secretary, not later than  
25 30 days prior to the offering of coverage de-

scribed in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the Benefit Choice Standards in a nonadopting State;

“(B) notifies the insurance department of a nonadopting State (or other State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage in that State consistent with the Benefit Choice Standards, and provides with such notice a copy of any insurance policy that it intends to offer in the State, its most recent annual and quarterly financial reports, and any other information required to be filed with the insurance department of the State (or other State agency) by the Secretary in regulations; and

“(C) includes in the terms of the health insurance coverage offered in nonadopting States (including in the terms of any individual certificates that may be offered to individuals in connection with such group health coverage) and filed with the State pursuant to subparagraph (B), a description in the insurer’s contract of

1 the Benefit Choice Standards and that adher-  
2 ence to such Standards is included as a term of  
3 such contract.

4 “(4) HEALTH INSURANCE COVERAGE.—The  
5 term ‘health insurance coverage’ means any coverage  
6 issued in the group or individual health insurance  
7 markets, except that such term shall not include ex-  
8 cepted benefits (as defined in section 2791(c)).

9 “(5) NONADOPTING STATE.—The term ‘non-  
10 adopting State’ means a State that is not an adopt-  
11 ing State.

12 “(6) SMALL GROUP INSURANCE MARKET.—The  
13 term ‘small group insurance market’ shall have the  
14 meaning given the term ‘small group market’ in sec-  
15 tion 2791(e)(5).

16 “(7) STATE LAW.—The term ‘State law’ means  
17 all laws, decisions, rules, regulations, or other State  
18 actions (including actions by a State agency) having  
19 the effect of law, of any State.

20 **“SEC. 2922. OFFERING AFFORDABLE PLANS.**

21 “(a) BENEFIT CHOICE OPTIONS.—

22 “(1) DEVELOPMENT.—Not later than 6 months  
23 after the date of enactment of this title, the Sec-  
24 retary shall issue, by interim final rule, Benefit

1 Choice Standards that implement the standards pro-  
2 vided for in this part.

3 “(2) BASIC OPTIONS.—The Benefit Choice  
4 Standards shall provide that a health insurance  
5 issuer in a State, may offer a coverage plan or plan  
6 in the small group market, individual market, large  
7 group market, or through a small business health  
8 plan, that does not comply with one or more man-  
9 dates regarding covered benefits, services, or cat-  
10 egory of provider as may be in effect in such State  
11 with respect to such market or markets (either prior  
12 to or following the date of enactment of this title),  
13 if such issuer also offers in such market or markets  
14 an enhanced option as provided for in paragraph  
15 (3).

16 “(3) ENHANCED OPTION.—A health insurance  
17 issuer issuing a basic option as provided for in para-  
18 graph (2) shall also offer to purchasers (including,  
19 with respect to a small business health plan, the par-  
20 ticipating employers of such plan) an enhanced op-  
21 tion, which shall at a minimum include such covered  
22 benefits, services, and categories of providers as are  
23 covered by a State employee coverage plan in one of  
24 the 5 most populous States as are in effect in the

1       calendar year in which such enhanced option is of-  
2       ferred.

3           “(4) PUBLICATION OF BENEFITS.—Not later  
4       than 3 months after the date of enactment of this  
5       title, and on the first day of every calendar year  
6       thereafter, the Secretary shall publish in the Federal  
7       Register such covered benefits, services, and cat-  
8       egories of providers covered in that calendar year by  
9       the State employee coverage plans in the 5 most  
10      populous States.

11      “(b) EFFECTIVE DATES.—

12           “(1) SMALL BUSINESS HEALTH PLANS.—With  
13      respect to health insurance provided to participating  
14      employers of small business health plans, the re-  
15      quirements of this part (concerning lower cost plans)  
16      shall apply beginning on the date that is 12 months  
17      after the date of enactment of this title.

18           “(2) NON-ASSOCIATION COVERAGE.—With re-  
19      spect to health insurance provided to groups or indi-  
20      viduals other than participating employers of small  
21      business health plans, the requirements of this part  
22      shall apply beginning on the date that is 15 months  
23      after the date of enactment of this title.

24      **“SEC. 2923. APPLICATION AND PREEMPTION.**

25      “(a) SUPERCEDING OF STATE LAW.—



1           “(1) IN GENERAL.—This part shall supersede  
2           any and all State laws insofar as such laws relate to  
3           mandates relating to covered benefits, services, or  
4           categories of provider in the health insurance market  
5           as applied to an eligible insurer, or health insurance  
6           coverage issued by an eligible insurer, including with  
7           respect to coverage issued to a small business health  
8           plan, in a nonadopting State.

9           “(2) NONADOPTING STATES.—This part shall  
10          supersede any and all State laws of a nonadopting  
11          State (whether enacted prior to or after the date of  
12          enactment of this title) insofar as such laws—

13               “(A) prohibit an eligible insurer from of-  
14               fering, marketing, or implementing health in-  
15               surance coverage consistent with the Benefit  
16               Choice Standards, as provided for in section  
17               2922(a); or

18               “(B) have the effect of retaliating against  
19               or otherwise punishing in any respect an eligible  
20               insurer for offering, marketing, or imple-  
21               menting health insurance coverage consistent  
22               with the Benefit Choice Standards.

23          “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

1           “(1) NONAPPLICATION TO ADOPTING STATES.—  
2           Subsection (a) shall not apply with respect to adopt-  
3           ing States.

4           “(2) NONAPPLICATION TO CERTAIN INSUR-  
5           ERS.—Subsection (a) shall not apply with respect to  
6           insurers that do not qualify as eligible insurers who  
7           offer health insurance coverage in a nonadopting  
8           State.

9           “(3) NONAPPLICATION WHERE OBTAINING RE-  
10          LIEF UNDER STATE LAW.—Subsection (a)(1) shall  
11          not supercede any State law of a nonadopting State  
12          to the extent necessary to permit individuals or the  
13          insurance department of the State (or other State  
14          agency) to obtain relief under State law to require  
15          an eligible insurer to comply with the Benefit Choice  
16          Standards.

17          “(4) NO EFFECT ON PREEMPTION.—In no case  
18          shall this part be construed to limit or affect in any  
19          manner the preemptive scope of sections 502 and  
20          514 of the Employee Retirement Income Security  
21          Act of 1974. In no case shall this part be construed  
22          to create any cause of action under Federal or State  
23          law or enlarge or affect any remedy available under  
24          the Employee Retirement Income Security Act of  
25          1974

1   **“SEC. 2924. CIVIL ACTIONS AND JURISDICTION.**

2           “(a) IN GENERAL.—The courts of the United States  
3 shall have exclusive jurisdiction over civil actions involving  
4 the interpretation of this part.

5           “(b) ACTIONS.—An eligible insurer may bring an ac-  
6 tion in the district courts of the United States for injunc-  
7 tive or other equitable relief against any officials or agents  
8 of a nonadopting State in connection with any conduct or  
9 action, or proposed conduct or action, by such officials or  
10 agents which violates, or which would if undertaken vio-  
11 late, section 2923.

12           “(c) DIRECT FILING IN COURT OF APPEALS.—At the  
13 election of the eligible insurer, an action may be brought  
14 under subsection (b) directly in the United States Court  
15 of Appeals for the circuit in which the nonadopting State  
16 is located by the filing of a petition for review in such  
17 Court.

18           “(d) EXPEDITED REVIEW.—

19               “(1) DISTRICT COURT.—In the case of an ac-  
20 tion brought in a district court of the United States  
21 under subsection (b), such court shall complete such  
22 action, including the issuance of a judgment, prior  
23 to the end of the 120-day period beginning on the  
24 date on which such action is filed, unless all parties  
25 to such proceeding agree to an extension of such pe-  
26 riod.

1           “(2) COURT OF APPEALS.—In the case of an  
2           action brought directly in a United States Court of  
3           Appeal under subsection (c), or in the case of an ap-  
4           peal of an action brought in a district court under  
5           subsection (b), such Court shall complete all action  
6           on the petition, including the issuance of a judg-  
7           ment, prior to the end of the 60-day period begin-  
8           ning on the date on which such petition is filed with  
9           the Court, unless all parties to such proceeding  
10          agree to an extension of such period.

11          “(e) STANDARD OF REVIEW.—A court in an action  
12          filed under this section, shall render a judgment based on  
13          a review of the merits of all questions presented in such  
14          action and shall not defer to any conduct or action, or  
15          proposed conduct or action, of a nonadopting State.

16          **“SEC. 2925. RULES OF CONSTRUCTION.**

17          “(a) IN GENERAL.—Notwithstanding any other pro-  
18          vision of Federal or State law, a health insurance issuer  
19          in an adopting State or an eligible insurer in a non-adopt-  
20          ing State may amend its existing policies to be consistent  
21          with the terms of this subtitle (concerning rating and ben-  
22          efits).

23          “(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this  
24          subtitle shall be construed to inhibit the development of

1 health savings accounts pursuant to section 223 of the In-  
2 ternal Revenue Code of 1986.”.

3 **TITLE III—HARMONIZATION OF**  
4 **HEALTH INSURANCE STAND-**  
5 **ARDS**

6 **SEC. 301. HEALTH INSURANCE STANDARDS HARMONI-**  
7 **ZATION.**

8 Title XXIX of the Public Health Service Act (as  
9 added by section 201) is amended by adding at the end  
10 the following:

11 **“Subtitle B—Standards**  
12 **Harmonization**

13 **“SEC. 2931. DEFINITIONS.**

14 “In this subtitle:

15 “(1) **ADOPTING STATE.**—The term ‘adopting  
16 State’ means a State that has enacted the har-  
17 monized standards adopted under this subtitle in  
18 their entirety and as the exclusive laws of the State  
19 that relate to the harmonized standards.

20 “(2) **ELIGIBLE INSURER.**—The term ‘eligible  
21 insurer’ means a health insurance issuer that is li-  
22 censed in a nonadopting State and that—

23 “(A) notifies the Secretary, not later than  
24 30 days prior to the offering of coverage de-  
25 scribed in this subparagraph, that the issuer in-

1 tends to offer health insurance coverage con-  
2 sistent with the harmonized standards in a non-  
3 adopting State;

4 “(B) notifies the insurance department of  
5 a nonadopting State (or other State agency),  
6 not later than 30 days prior to the offering of  
7 coverage described in this subparagraph, that  
8 the issuer intends to offer health insurance cov-  
9 erage in that State consistent with the har-  
10 monized standards published pursuant to sec-  
11 tion 2932(d), and provides with such notice a  
12 copy of any insurance policy that it intends to  
13 offer in the State, its most recent annual and  
14 quarterly financial reports, and any other infor-  
15 mation required to be filed with the insurance  
16 department of the State (or other State agency)  
17 by the Secretary in regulations; and

18 “(C) includes in the terms of the health in-  
19 surance coverage offered in nonadopting States  
20 (including in the terms of any individual certifi-  
21 cates that may be offered to individuals in con-  
22 nection with such health coverage) and filed  
23 with the State pursuant to subparagraph (B), a  
24 description of the harmonized standards pub-  
25 lished pursuant to section 2932(g)(2) and an

1 affirmation that such standards are a term of  
2 the contract.

3 “(3) HARMONIZED STANDARDS.—The term  
4 ‘harmonized standards’ means the standards cer-  
5 tified by the Secretary under section 2932(d).

6 “(4) HEALTH INSURANCE COVERAGE.—The  
7 term ‘health insurance coverage’ means any coverage  
8 issued in the health insurance market, except that  
9 such term shall not include excepted benefits (as de-  
10 fined in section 2791(c).

11 “(5) NONADOPTING STATE.—The term ‘non-  
12 adopting State’ means a State that fails to enact,  
13 within 18 months of the date on which the Secretary  
14 certifies the harmonized standards under this sub-  
15 title, the harmonized standards in their entirety and  
16 as the exclusive laws of the State that relate to the  
17 harmonized standards.

18 “(6) STATE LAW.—The term ‘State law’ means  
19 all laws, decisions, rules, regulations, or other State  
20 actions (including actions by a State agency) having  
21 the effect of law, of any State.

22 **“SEC. 2932. HARMONIZED STANDARDS.**

23 “(a) BOARD.—

24 “(1) ESTABLISHMENT.—Not later than 3  
25 months after the date of enactment of this title, the

1 Secretary, in consultation with the NAIC, shall es-  
2 tablish the Health Insurance Consensus Standards  
3 Board (referred to in this subtitle as the ‘Board’) to  
4 develop recommendations that harmonize incon-  
5 sistent State health insurance laws in accordance  
6 with the procedures described in subsection (b).

7 “(2) COMPOSITION.—

8 “(A) IN GENERAL.—The Board shall be  
9 composed of the following voting members to be  
10 appointed by the Secretary after considering the  
11 recommendations of professional organizations  
12 representing the entities and constituencies de-  
13 scribed in this paragraph:

14 “(i) Four State insurance commis-  
15 sioners as recommended by the National  
16 Association of Insurance Commissioners, of  
17 which 2 shall be Democrats and 2 shall be  
18 Republicans, and of which one shall be des-  
19 ignated as the chairperson and one shall be  
20 designated as the vice chairperson.

21 “(ii) Four representatives of State  
22 government, two of which shall be gov-  
23 ernors of States and two of which shall be  
24 State legislators, and two of which shall be



1 Democrats and two of which shall be Re-  
2 publicans.

3 “(iii) Four representatives of health  
4 insurers, of which one shall represent in-  
5 surers that offer coverage in the small  
6 group market, one shall represent insurers  
7 that offer coverage in the large group mar-  
8 ket, one shall represent insurers that offer  
9 coverage in the individual market, and one  
10 shall represent carriers operating in a re-  
11 gional market.

12 “(iv) Two representatives of insurance  
13 agents and brokers.

14 “(v) Two independent representatives  
15 of the American Academy of Actuaries who  
16 have familiarity with the actuarial methods  
17 applicable to health insurance.

18 “(B) EX OFFICIO MEMBER.—A representa-  
19 tive of the Secretary shall serve as an ex officio  
20 member of the Board.

21 “(3) ADVISORY PANEL.—The Secretary shall  
22 establish an advisory panel to provide advice to the  
23 Board, and shall appoint its members after consid-  
24 ering the recommendations of professional organiza-

1        tions representing the entities and constituencies  
2        identified in this paragraph:

3                “(A) Two representatives of small business  
4        health plans.

5                “(B) Two representatives of employers, of  
6        which one shall represent small employers and  
7        one shall represent large employers.

8                “(C) Two representatives of consumer or-  
9        ganizations.

10               “(D) Two representatives of health care  
11       providers.

12               “(4) QUALIFICATIONS.—The membership of the  
13       Board shall include individuals with national rec-  
14       ognition for their expertise in health finance and ec-  
15       onomics, actuarial science, health plans, providers of  
16       health services, and other related fields, who provide  
17       a mix of different professionals, broad geographic  
18       representation, and a balance between urban and  
19       rural representatives.

20               “(5) ETHICAL DISCLOSURE.—The Secretary  
21       shall establish a system for public disclosure by  
22       members of the Board of financial and other poten-  
23       tial conflicts of interest relating to such members.  
24       Members of the Board shall be treated as employees  
25       of Congress for purposes of applying title I of the

1       Ethics in Government Act of 1978 (Public Law 95–  
2       521).

3           “(6) DIRECTOR AND STAFF.—Subject to such  
4       review as the Secretary deems necessary to assure  
5       the efficient administration of the Board, the chair  
6       and vice-chair of the Board may—

7           “(A) employ and fix the compensation of  
8       an Executive Director (subject to the approval  
9       of the Comptroller General) and such other per-  
10      sonnel as may be necessary to carry out its du-  
11      ties (without regard to the provisions of title 5,  
12      United States Code, governing appointments in  
13      the competitive service);

14          “(B) seek such assistance and support as  
15      may be required in the performance of its du-  
16      ties from appropriate Federal departments and  
17      agencies;

18          “(C) enter into contracts or make other ar-  
19      rangements, as may be necessary for the con-  
20      duct of the work of the Board (without regard  
21      to section 3709 of the Revised Statutes (41  
22      U.S.C. 5));

23          “(D) make advance, progress, and other  
24      payments which relate to the work of the  
25      Board;

1                   “(E) provide transportation and subsist-  
2                   ence for persons serving without compensation;  
3                   and

4                   “(F) prescribe such rules as it deems nec-  
5                   essary with respect to the internal organization  
6                   and operation of the Board.

7                   “(7) TERMS.—The members of the Board shall  
8                   serve for the duration of the Board. Vacancies in the  
9                   Board shall be filled as needed in a manner con-  
10                  sistent with the composition described in paragraph  
11                  (2).

12                  “(b) DEVELOPMENT OF HARMONIZED STAND-  
13                  ARDS.—

14                  “(1) IN GENERAL.—In accordance with the  
15                  process described in subsection (c), the Board shall  
16                  identify and recommend nationally harmonized  
17                  standards for each of the following process cat-  
18                  egories:

19                  “(A) FORM FILING AND RATE FILING.—  
20                  Form and rate filing standards shall be estab-  
21                  lished which promote speed to market and in-  
22                  clude the following defined areas for States that  
23                  require such filings:

1 “(i) Procedures for form and rate fil-  
2 ing pursuant to a streamlined administra-  
3 tive filing process.

4 “(ii) Timeframes for filings to be re-  
5 viewed by a State if review is required be-  
6 fore they are deemed approved.

7 “(iii) Timeframes for an eligible in-  
8 surer to respond to State requests fol-  
9 lowing its review.

10 “(iv) A process for an eligible insurer  
11 to self-certify.

12 “(v) State development of form and  
13 rate filing templates that include only non-  
14 preempted State law and Federal law re-  
15 quirements for eligible insurers with timely  
16 updates.

17 “(vi) Procedures for the resubmission  
18 of forms and rates.

19 “(vii) Disapproval rationale of a form  
20 or rate filing based on material omissions  
21 or violations of non-preempted State law or  
22 Federal law with violations cited and ex-  
23 plained.

24 “(viii) For States that may require a  
25 hearing, a rationale for hearings based on

1 violations of non-preempted State law or  
2 insurer requests.

3 “(B) MARKET CONDUCT REVIEW.—Market  
4 conduct review standards shall be developed  
5 which provide for the following:

6 “(i) Mandatory participation in na-  
7 tional databases.

8 “(ii) The confidentiality of examina-  
9 tion materials.

10 “(iii) The identification of the State  
11 agency with primary responsibility for ex-  
12 aminations.

13 “(iv) Consultation and verification of  
14 complaint data with the eligible insurer  
15 prior to State actions.

16 “(v) Consistency of reporting require-  
17 ments with the recordkeeping and adminis-  
18 trative practices of the eligible insurer.

19 “(vi) Examinations that seek to cor-  
20 rect material errors and harmful business  
21 practices rather than infrequent errors.

22 “(vii) Transparency and publishing of  
23 the State’s examination standards.

24 “(viii) Coordination of market conduct  
25 analysis.

1                   “(ix) Coordination and nonduplication  
2                   between State examinations of the same el-  
3                   igible insurer.

4                   “(x) Rationale and protocols to be  
5                   met before a full examination is conducted.

6                   “(xi) Requirements on examiners  
7                   prior to beginning examinations such as  
8                   budget planning and work plans.

9                   “(xii) Consideration of methods to  
10                  limit examiners’ fees such as caps, com-  
11                  petitive bidding, or other alternatives.

12                  “(xiii) Reasonable fines and penalties  
13                  for material errors and harmful business  
14                  practices.

15                  “(C) PROMPT PAYMENT OF CLAIMS.—The  
16                  Board shall establish prompt payment stand-  
17                  ards for eligible insurers based on standards  
18                  similar to those applicable to the Social Secu-  
19                  rity Act as set forth in section 1842(c)(2) of  
20                  such Act (42 U.S.C. 1395u(c)(2)). Such prompt  
21                  payment standards shall be consistent with the  
22                  timing and notice requirements of the claims  
23                  procedure rules to be specified under subpara-  
24                  graph (D), and shall include appropriate excep-

1           tions such as for fraud, nonpayment of pre-  
2           miums, or late submission of claims.

3                   “(D) INTERNAL REVIEW.—The Board  
4           shall establish standards for claims procedures  
5           for eligible insurers that are consistent with the  
6           requirements relating to initial claims for bene-  
7           fits and appeals of claims for benefits under the  
8           Employee Retirement Income Security Act of  
9           1974 as set forth in section 503 of such Act  
10          (29 U.S.C. 1133) and the regulations there-  
11          under.

12                   “(2) RECOMMENDATIONS.—The Board shall  
13          recommend harmonized standards for each element  
14          of the categories described in subparagraph (A)  
15          through (D) of paragraph (1) within each such mar-  
16          ket. Notwithstanding the previous sentence, the  
17          Board shall not recommend any harmonized stand-  
18          ards that disrupt, expand, or duplicate the benefit,  
19          service, or provider mandate standards provided in  
20          the Benefit Choice Standards pursuant to section  
21          2922(a).

22                   “(c) PROCESS FOR IDENTIFYING HARMONIZED  
23          STANDARDS.—

24                   “(1) IN GENERAL.—The Board shall develop  
25          recommendations to harmonize inconsistent State in-



1       surance laws with respect to each of the process cat-  
2       egories described in subparagraphs (A) through (D)  
3       of subsection (b)(1).

4               “(2) REQUIREMENTS.—In adopting standards  
5       under this section, the Board shall consider the fol-  
6       lowing:

7               “(A) Any model acts or regulations of the  
8       National Association of Insurance Commis-  
9       sioners in each of the process categories de-  
10      scribed in subparagraphs (A) through (D) of  
11      subsection (b)(1).

12              “(B) Substantially similar standards fol-  
13      lowed by a plurality of States, as reflected in  
14      existing State laws, relating to the specific proc-  
15      ess categories described in subparagraphs (A)  
16      through (D) of subsection (b)(1).

17              “(C) Any Federal law requirement related  
18      to specific process categories described in sub-  
19      paragraphs (A) through (D) of subsection  
20      (b)(1).

21              “(D) In the case of the adoption of any  
22      standard that differs substantially from those  
23      referred to in subparagraphs (A), (B), or (C),  
24      the Board shall provide evidence to the Sec-  
25      retary that such standard is necessary to pro-

1           tect health insurance consumers or promote  
2           speed to market or administrative efficiency.

3           “(E) The criteria specified in clauses (i)  
4           through (iii) of subsection (d)(2)(B).

5           “(d) RECOMMENDATIONS AND CERTIFICATION BY  
6   SECRETARY.—

7           “(1) RECOMMENDATIONS.—Not later than 18  
8           months after the date on which all members of the  
9           Board are selected under subsection (a), the Board  
10          shall recommend to the Secretary the certification of  
11          the harmonized standards identified pursuant to  
12          subsection (c).

13          “(2) CERTIFICATION.—

14                 “(A) IN GENERAL.—Not later than 120  
15                 days after receipt of the Board’s recommenda-  
16                 tions under paragraph (1), the Secretary shall  
17                 certify the recommended harmonized standards  
18                 as provided for in subparagraph (B), and issue  
19                 such standards in the form of an interim final  
20                 regulation.

21                 “(B) CERTIFICATION PROCESS.—The Sec-  
22                 retary shall establish a process for certifying  
23                 the recommended harmonized standard, by cat-  
24                 egory, as recommended by the Board under this  
25                 section. Such process shall—

1 “(i) ensure that the certified stand-  
2 ards for a particular process area achieve  
3 regulatory harmonization with respect to  
4 health plans on a national basis;

5 “(ii) ensure that the approved stand-  
6 ards are the minimum necessary, with re-  
7 gard to substance and quantity of require-  
8 ments, to protect health insurance con-  
9 sumers and maintain a competitive regu-  
10 latory environment; and

11 “(iii) ensure that the approved stand-  
12 ards will not limit the range of group  
13 health plan designs and insurance prod-  
14 ucts, such as catastrophic coverage only  
15 plans, health savings accounts, and health  
16 maintenance organizations, that might oth-  
17 erwise be available to consumers.

18 “(3) EFFECTIVE DATE.—The standards cer-  
19 tified by the Secretary under paragraph (2) shall be  
20 effective on the date that is 18 months after the  
21 date on which the Secretary certifies the harmonized  
22 standards.

23 “(e) TERMINATION.—The Board shall terminate and  
24 be dissolved after making the recommendations to the Sec-  
25 retary pursuant to subsection (d)(1).

1       “(f) ONGOING REVIEW.—Not earlier than 3 years  
2 after the termination of the Board under subsection (e),  
3 and not earlier than every 3 years thereafter, the Sec-  
4 retary, in consultation with the National Association of In-  
5 surance Commissioners and the entities and constituencies  
6 represented on the Board and the Advisory Panel, shall  
7 prepare and submit to the appropriate committees of Con-  
8 gress a report that assesses the effect of the harmonized  
9 standards on access, cost, and health insurance market  
10 functioning. The Secretary may, based on such report and  
11 applying the process established for certification under  
12 subsection (d)(2)(B), in consultation with the National  
13 Association of Insurance Commissioners and the entities  
14 and constituencies represented on the Board and the Advi-  
15 sory Panel, update the harmonized standards through no-  
16 tice and comment rulemaking.

17       “(g) PUBLICATION.—

18               “(1) LISTING.—The Secretary shall maintain  
19 an up to date listing of all harmonized standards  
20 certified under this section on the Internet website  
21 of the Department of Health and Human Services.

22               “(2) SAMPLE CONTRACT LANGUAGE.—The Sec-  
23 retary shall publish on the Internet website of the  
24 Department of Health and Human Services sample  
25 contract language that incorporates the harmonized

1 standards certified under this section, which may be  
2 used by insurers seeking to qualify as an eligible in-  
3 surer. The types of harmonized standards that shall  
4 be included in sample contract language are the  
5 standards that are relevant to the contractual bar-  
6 gain between the insurer and insured.

7 “(h) STATE ADOPTION AND ENFORCEMENT.—Not  
8 later than 18 months after the certification by the Sec-  
9 retary of harmonized standards under this section, the  
10 States may adopt such harmonized standards (and become  
11 an adopting State) and, in which case, shall enforce the  
12 harmonized standards pursuant to State law.

13 **“SEC. 2933. APPLICATION AND PREEMPTION.**

14 “(a) SUPERCEDING OF STATE LAW.—

15 “(1) IN GENERAL.—The harmonized standards  
16 certified under this subtitle shall supersede any and  
17 all State laws of a non-adopting State insofar as  
18 such State laws relate to the areas of harmonized  
19 standards as applied to an eligible insurer, or health  
20 insurance coverage issued by a eligible insurer, in-  
21 cluding with respect to coverage issued to a small  
22 business health plan, in a nonadopting State.

23 “(2) NONADOPTING STATES.—This subtitle  
24 shall supersede any and all State laws of a non-  
25 adopting State (whether enacted prior to or after the

1 date of enactment of this title) insofar as they  
2 may—

3 “(A) prohibit an eligible insurer from of-  
4 fering, marketing, or implementing health in-  
5 surance coverage consistent with the har-  
6 monized standards; or

7 “(B) have the effect of retaliating against  
8 or otherwise punishing in any respect an eligible  
9 insurer for offering, marketing, or imple-  
10 menting health insurance coverage consistent  
11 with the harmonized standards under this sub-  
12 title.

13 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

14 “(1) NONAPPLICATION TO ADOPTING STATES.—  
15 Subsection (a) shall not apply with respect to adopt-  
16 ing States.

17 “(2) NONAPPLICATION TO CERTAIN INSUR-  
18 ERS.—Subsection (a) shall not apply with respect to  
19 insurers that do not qualify as eligible insurers who  
20 offer health insurance coverage in a nonadopting  
21 State.

22 “(3) NONAPPLICATION WHERE OBTAINING RE-  
23 LIEF UNDER STATE LAW.—Subsection (a)(1) shall  
24 not supercede any State law of a nonadopting State  
25 to the extent necessary to permit individuals or the

1 insurance department of the State (or other State  
2 agency) to obtain relief under State law to require  
3 an eligible insurer to comply with the harmonized  
4 standards under this subtitle.

5 “(4) NO EFFECT ON PREEMPTION.—In no case  
6 shall this subtitle be construed to limit or affect in  
7 any manner the preemptive scope of sections 502  
8 and 514 of the Employee Retirement Income Secu-  
9 rity Act of 1974. In no case shall this subtitle be  
10 construed to create any cause of action under Fed-  
11 eral or State law or enlarge or affect any remedy  
12 available under the Employee Retirement Income  
13 Security Act of 1974.

14 “(c) EFFECTIVE DATE.—This section shall apply be-  
15 ginning on the date that is 18 months after the date on  
16 harmonized standards are certified by the Secretary under  
17 this subtitle.

18 **“SEC. 2934. CIVIL ACTIONS AND JURISDICTION.**

19 “(a) IN GENERAL.—The district courts of the United  
20 States shall have exclusive jurisdiction over civil actions  
21 involving the interpretation of this subtitle.

22 “(b) ACTIONS.—An eligible insurer may bring an ac-  
23 tion in the district courts of the United States for injunc-  
24 tive or other equitable relief against any officials or agents  
25 of a nonadopting State in connection with any conduct or

1 action, or proposed conduct or action, by such officials or  
2 agents which violates, or which would if undertaken vio-  
3 late, section 2933.

4 “(c) DIRECT FILING IN COURT OF APPEALS.—At the  
5 election of the eligible insurer, an action may be brought  
6 under subsection (b) directly in the United States Court  
7 of Appeals for the circuit in which the nonadopting State  
8 is located by the filing of a petition for review in such  
9 Court.

10 “(d) EXPEDITED REVIEW.—

11 “(1) DISTRICT COURT.—In the case of an ac-  
12 tion brought in a district court of the United States  
13 under subsection (b), such court shall complete such  
14 action, including the issuance of a judgment, prior  
15 to the end of the 120-day period beginning on the  
16 date on which such action is filed, unless all parties  
17 to such proceeding agree to an extension of such pe-  
18 riod.

19 “(2) COURT OF APPEALS.—In the case of an  
20 action brought directly in a United States Court of  
21 Appeal under subsection (c), or in the case of an ap-  
22 peal of an action brought in a district court under  
23 subsection (b), such Court shall complete all action  
24 on the petition, including the issuance of a judg-  
25 ment, prior to the end of the 60-day period begin-



1       ning on the date on which such petition is filed with  
2       the Court, unless all parties to such proceeding  
3       agree to an extension of such period.

4       “(e) STANDARD OF REVIEW.—A court in an action  
5       filed under this section, shall render a judgment based on  
6       a review of the merits of all questions presented in such  
7       action and shall not defer to any conduct or action, or  
8       proposed conduct or action, of a nonadopting State.

9       **“SEC. 2935. AUTHORIZATION OF APPROPRIATIONS; RULE**  
10                   **OF CONSTRUCTION.**

11       “(a) AUTHORIZATION OF APPROPRIATIONS.—There  
12       are authorized to be appropriated such sums as may be  
13       necessary to carry out this subtitle.

14       “(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this  
15       subtitle shall be construed to inhibit the development of  
16       health savings accounts pursuant to section 223 of the In-  
17       ternal Revenue Code of 1986.”.